PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

ANIMALS.

In *Bentz* v. *Page,* 39 Southern 599, it appeared that a man while on a public street was attacked, thrown down, and bitten by a dog of the defendant. The Supreme Court of Louisiana holds that in order to relieve the defendant from liability it was necessary for him to show that the animal had always been of a kind temper, had never attempted to bite anyone, and had never given occasion to suspect that he would bite; and, failing to do so, the law presumes that the defendant was in fault in not confining the animal, which was a strange dog, to the premises. Compare *The Martinez Case,* 106 La. 368, 55 L. R. A. 671.

Dogs: Liability of Master

ASSAULT AND BATTERY.

In *Holmes* v. *State,* 39 Southern 569, the Supreme Court of Alabama decides that a teacher or other person standing *in loco parentis,* exercising the parent's delegated authority, may administer reasonable chastisement to a child; and to make it criminal he must not only inflict on the child immoderate chastisement, but he must also do so *malo animo,* or must inflict on him some permanent injury. It is held also that in a prosecution for assault committed in the chastisement of a pupil it was competent to show that the pupil was confined to her bed on account of the punishment, and the length of time she was confined. Compare *Boyd* v. *State,* 88 Ala. 169.

Chastisement of Pupils

BANKRUPTCY.

In *Keyes, Sheriff,* v. *Bennett,* 75 N. E. 1075, the Supreme Court of Illinois decides that where the principal in a bail bond is discharged in bankruptcy, the bail is deprived of his right to seize and surrender the principal and is released from liability on the bond, though he did not procure a formal exoneretur. Compare *Mather* v. *People,* 12 Ill. 9.

Discharge: Release of Surety

CARRIERS.

In *Hutchinson* v. *Southern Ry. Co.,* 52 S. E. 263, the Supreme Court of North Carolina decides that where a person having a ticket calling for a regular station as her destination was permitted without objection to take a train which did not stop at that station, and she did not know that the train did not stop there, and there was nothing on the face of the ticket to show that it was not good on that train, it was the duty of the company to stop the train at that station to permit her to alight.

Discharge: Release of Surity

In *Crandall* v. *Minneapolis, St. P. & S. S. M. Ry. Co.,* 105 N. W. 185, the Supreme Court of Minnesota decides that in the action to recover damages for personal injuries sustained by the alleged negligence of the defendant in failing to keep the vestibule doors at the rear of its sleeping-car closed between stations, the defendant was not bound to have the car vestibuled, but, having done so, it could not lead passengers to believe that the doors of the vestibule would be kept closed between stations, and then negligently leave them open, without incurring liability to a passenger injured thereby.

Injuries to Passengers

The Supreme Court of Minnesota decides in *Swedish-American Natl. Bank of Minneapolis* v. *Chicago, B. & Q. Ry. Co.,* 105 N. W. 69, that a carrier, even as to an innocent indorsee, is not estopped by statements in a bill of lading issued by his agents from showing that no goods in fact were received for transportation, unless

Bills of Lading

CARRIERS (Continued).

by his usual mode of doing business he has given to his agents authority to issue bills of lading for goods not received.

CONFLICT OF LAWS.

The Court of Appeals of New York holds in *Chemical Nat. Bank of New York* v. *Kellogg,* 75 N. E. 1103, that where a married woman at her residence in New Jersey indorses in blank, for the benefit of her husband, his promissory note, dated and payable in New York, where it is discounted in good faith, without notice that the indorsement was in fact made in New Jersey, she is estopped from denying that the indorsement is a New York contract and from claiming that the indorsement is void as a New Jersey contract, the laws of which state do not permit a married woman to become an accommodation indorser. And it is further decided that where a note is dated and payable in the state of New York, an indorsement in blank thereon is presumed, under the common law, to have been made in New York, and one discounting the note in good faith can rely on such indorsement. Compare *Thompson* v. *Taylor,* 66 N. J. Law 253, 54 L. R. A. 585.

Husband and Wife

CONSTITUTIONAL LAW.

In *State* v. *Cudahy Packing Co.,* 82 Pac. 833, the Supreme Court of Montana decides that a provision of the State penal code, prohibiting combinations for the purpose of fixing the price or regulating the production of any article of commerce, etc., is, by reason of a section exempting from its provisions persons engaged in horticulture or agriculture, repugnant to the fourteenth amendment to the Federal Constitution, because denying the equal protection of the laws. See in connection herewith *Sprague* v. *Thompson,* 118 U. S. 90.

Equal Protection of the Laws

CONTRACTS.

Inventions Validity

The United States Circuit Court of Appeals (First Circuit) decides in *Reece Folding Mach. Co.* v. *Felwick, et al.*, 140 Fed. 287 that a contract by an inventor, who has sold inventions, to disclose and assign to the purchaser any future inventions made by him for improvements thereon, is not contrary to public policy, but is valid and enforceable if based on a valuable consideration. See also *Thibodeau* v. *Hildreth* 124 Fed. 892, 63 L. R. A. 480.

CORPORATIONS.

Dissolution

In *State* v. *Chilhowee Woolen Mills,* 89 S. W. 741, the Supreme Court of Tennessee decides that a majority of the stockholders of a business corporation were entitled to abandon, discontinue, and dissolve the corporation on terms offered to all stockholders alike over the protest of the minority before the corporation had purchased any property, incurred any debts, or accomplished anything more than a temporary organization.

Accommodation Endorsement

The Supreme Judicial Court of Massachusetts decides in *J. G. Brill Co.* v. *Norton & T. St. Ry.,* 75 N. E. 1090, that a corporation was not liable on an accommodation indorsement in the hands of one taking with notice, though such an indorsement was authorized by the directors and a majority of the stockholders. Compare *Usher* v. *Raymond Skate Co.,* 163 Mass. 1.

DAMAGES.

Permanent Injuries to Real Estate

In *Rabe* v. *Shoenberger, Coal Co., Appellant,* 213 Pa. 252, the Supreme Court of Pennsylvania holds that where there is a permanent injury to real estate the extent of the damage caused thereby is to be measured by the resulting depreciation in the value of the property; and this rule applies not only where the injury

DAMAGES (Continued)

to property is for public use but also where the issue is between private persons.

Applying this rule it is decided that in an action of trespass by the owner of the surface of land against a mining company, which in mining the coal has failed to leave sufficient support for the surface, and has destroyed five springs, the measure of damages is the permanent depreciation of the value of the farm caused by the destruction of the springs. The springs cannot be valued as independent pieces of property, but as elements going to make up the value of the farm as a whole. See in connection herewith *Hanover Water Co.* v. *Iron Co.*, 84 Pa. 279.

DEEDS.

The Supreme Court of Pennsylvania decides in *Southwestern State Normal School's Case,* 213 Pa. 244, that a sale of lots according to a plan implies a grant or covenant to each purchaser that the streets and alleys on the plan shall be forever opened to the use of the public, and operates as a dedication of them to public use. Such dedication cannot be revoked by the vendor; and the purchaser of each lot abutting on one of the streets or alleys, as well as all other persons purchasing and owning lots on the plan, may assert the public character of the streets and alleys and the right of the public to use them. Compare *Quicksall* v. *Philadelphia,* 177 Pa. 301.

Dedication: Plan of Lots

DIVORCE.

In *Tally* v. *Tally, Appellant,* 29 Pa. Sup. Ct. 535 the Superior Court of Pennsylvania decides that in a suit for divorce by a husband against a wife, where the ground is adultery, evidence of the wife's good reputation for virtue and chastity is inadmissible. Compare *Engleman* v. *Engleman,* 97 Va. 487.

Wife's Good Character

EMINENT DOMAIN.

The Supreme Court of Tennessee decides in *Gossepp* v. *Southern Ry. Co.*, 89 S. W. 737, that an adjoining property-owner is entitled to recover against a railroad company damages sustained by the noise and discomfort resulting from blasting operations incident to the construction of the road near his property. Compare the Pennsylvania decisions, *P. R. R. Co.* v. *Lippincott,* 116 Pa. 472 and *P. R. R. Co.* v. *Marchant,* 119 Pa. 541.

Railroads

EQUITY JURISDICTION.

In *Eichbaum* v. *Sample, Appellant,* 213 Pa. 216, the Supreme Court of Pennsylvania decides that where an owner of stock pledges it, or sells it with an option to repurchase on specified terms, he may maintain a bill in equity for a retransfer of the stock to himself, where it appears that the stock was not purchaseable in the market, that it had no quoted or ascertainable market value, and that plaintiff held it as an investment, having a peculiar value to him greater than the market price at the time of transfer. Compare *Northern Cent. Ry. Co.* v. *Walworth,* 193 Pa. 207.

Specific Performance

ESTOPPEL.

The Supreme Court of Nebraska decides in *First State Bank of Overton* v. *Stephens Bros.* 104 N. W. 43, that where a party gives a reason for his decision and conduct touching anything involved in a controversy, he is estopped after litigation has begun from changing his ground and putting his conduct on another and different consideration. Compare *Batlow* v. *Sherwood,* 32 Neb. 666.

Inconsistent Positions

EVIDENCE.

The Supreme Court of Wyoming decides in *Lewis* v. *England,* 82 Pa. 869, that the competency of a book offered to prove an account must be determined by the appearance and character of the book, the degree of education of the party keeping it, the nature of his

Books of Account

EVIDENCE (Continued).

business, the manner of his charges against other people, and all other surrounding circumstances, regardless of the fact that the book was not kept in a regular mode or method; and applying this principle decides that where a saloon-keeper, who was illiterate, caused his employees to enter daily transactions of debits and credits in the course of his business on tablet slips of paper which were dated and filed, from which entry they would be transferred at irregular intervals by other employees on to ledger slips, such tablet slips were admissible as books of original entry kept in the usual course of business. Compare *Larue* v. *Rowland,* 7 Barb. 107.

Purpose of Offer

It is decided by the Supreme Court of Pennsylvania in *Burns* v. *Penna. R. R. Co., Appellant,* 213 Pa. 280, that where the plaintiff in the trial of an action, offers evidence without disclosing the purpose of the offer, and the defendant in objecting to the offer assumes that it is for a purpose which makes the offer inadmissible, and the plaintiff makes no disclaimer of the purpose attributed in the objection, the Court has no right to assume that another and legitimate purpose was intended.

FRAUD.

Sale of Defective Machinery

The Court of Appeals of New York lays down an important general principle in *Kuelling* v. *Roderick Lean Mfg. Co.,* 75 N. E. 1098, where it decides that a vendor of a machine, which he knows to be dangerous because of concealed defects is liable in damages to any person, including one not in privity of contract with him, who is injured by reason of such fraudulent concealment. The facts were as follows: A manufacturer of a land-roller constructed the tongue of cross-grained wood, with a knot in it and a knot-hole, and plugged up the hole and by means of paint and putty concealed the defects. The court decides that the manufacturer was liable in an action for fraud and deceit for injuries sustained in consequence of such defects by a person purchasing the machine from one who had purchased it from the manufacturer. Compare *Woodward* v. *Miller,* 119 Ga. 618, 64 L. R. A. 932.

GRAND JURORS.

The United States District Court (W. D. North Carolina) decides *In re Atwell,* 140 Fed. 368, that the obligation of secrecy imposed on a grand juror by his oath with respect to the proceedings before the body is not removed by his discharge as a juror, but continues, unless removed by the Court in the interest of justice, and his disclosure to counsel for a person indicted, before his trial, of the evidence before the grand jury on which the indictment was based, is a violation of his oath and a contempt of the court, regardless of the purpose for which the disclosure was made. With this decision compare *State* v. *Broughton,* 29 N. C. 96.

Obligation of Secrecy

HOMICIDE.

In *Morris* v. *State,* 39 Southern 608, the Supreme Court of Alabama decides that a son, killing another in the defense of his father, cannot avail himself of the right of self-defense, unless both he and his father were free from fault in bringing on the difficulty; the general principle being that a son's right to kill in the defense of his father depends on the same conditions as would be necessary to excuse the father under the plea of self-defense.

Self-Defense

IMPROVEMENTS.

In *Bell* v. *Bair,* 89 S. W. 732, the Court of Appeals of Kentucky decides that where a deed conveying the separate real estate of a married woman was void for failure to comply with certain conditions and limitations of her right to convey the property, the grantee was entitled to recover the amount the vendible value of the land had been increased by improvements erected thereon by him in good faith.

Compensation

JUDGMENT.

In *Louisville & Nashville R. R. Co.*, v. *F. E. Deer*, 26 S. C. R. 207, the Supreme Court of the United States decides that a State Court has jurisdiction to render a valid judgment in garnishment of a debt due by a railway company doing business in the state, and permanently liable there to service and suit, to a non-resident who was served by such publication as the statutes of the state prescribe. Compare with this case the decision in *Harris* v. *Balk*, 198 U. S. 215.

Jurisdiction: Debt due Non-Resident

LARCENY.

In *People* v. *Pelton*, 82 Pac. 980, the Court of Appeals (Third District, California,) holds that where, in a prosecution for grand larency of money from a cash register a mutilated and alleged counterfeit coin was clearly identified as having been taken from the register at the time the crime was committed and was found on defendant's person when he was arrested a short time thereafter, it was properly admitted in evidence to connect defendant with the offense, though it was not "lawful money of the United States," which defendant was charged with taking.

Evidence

LIBEL AND SLANDER.

The Supreme Court of New Jersey decides in *Butler* v. *Hoboken Printing & Publishing Co.*, 62 Atl. 272, that in an action for libel or slander, damages cannot be assessed for physical sickness alleged to have been caused by the libel or slander. Compare *Terwilliger* v. *Wands*, 17 N. Y. 54.

Damages

MARRIAGE.

In *Klein, Appellant*, v. *Brumbaugh*, 29 Pa. Sup. Ct. 557, the Superior Court of Pennsylvania, considering the nature of the action to recover for breach of promise of marriage, decides that it is in substance an action based upon a contract and not sounding in tort,

Breach of Promise

MARRIAGE (Continued).

and that the defendant in such action against whom a judgment has been rendered is entitled to the benefit of the $300 exemption allowed to debtors. Compare *Welker* v. *Metcalf*, 209 Pa. 373.

MORTGAGES.

The Supreme Court of Illinois decides in *Jackson* v. *Grosser*, 75 N. E. 1032, that where one deed of trust secures two notes, an agreement between a purchaser of one of the notes that the lien of his note shall be subordinate to the lien of the other is valid, and he may, on foreclosing the trust deed to satisfy his note, procure a decree and sale of the property, subject to the continuing lien of the deed to secure the other note, as long as third persons are not injuriously affected thereby.

Liens Secured: Priorities

MUNICIPAL CORPORATIONS.

In *City of Passaic* v. *Paterson Billposting &c. Co.*, 62 Atl. 267, the Court of Errors and Appeals of New Jersey decides that a city ordinance requiring that sign or billboards shall be constructed not less than ten feet from the street line is a regulation not reasonably necessary for the public safety, and cannot be justified as an exercise of the police power. See in connection herewith *Commonwealth* v. *Boston Advertising Co.*, 188 Mass. 348.

Ordinances: Billboards

PARTNERSHIP.

In *Read* v. *Mackay*, 95 N. Y. Supp. 935, the New York Supreme Court (Special Term, New York County,) decides that while a firm name may in some cases be deemed a part of the good will of the business, it is not of itself necessarily so, and cannot be in cases of business which depend on the personal attributes of the partners engaged therein, such as professional partnerships or banking and brokerage partnerships, in which the name has become a symbol denoting the personal integrity and business qualities of the partners. It is therefore decided further that

Firm Name

PARTNERHSIP (Continued).

where partnership articles merely provide for the relinquishment of all claims to the firm name by the retiring partner and are silent as to the disposition to be made of the name upon the expiration of the partnership by limitation, and the name of the firm which is engaged in the banking and brokerage business has for many years been used as a symbol to denote the personal integrity and business qualities of the partners, it cannot be detached from the personnel of the partners, and sold as an asset of the good will of the business. Compare *Williams* v. *Farrand,* 88 Mich. 473, 14 L. R. A. 161.

PLEDGES.

Conversion of Pledge

The Supreme Court of Montana holds in *Demars* v. *Hudon,* 82 Pac. 952, that where a pledgee converted the property pledged by selling the same on credit for $2,500, without interest, taking the purchaser's secured note, which on payment of $2,050 was surrendered, the pledgor on waiving the tort, was entitled to recover the full sale price, and was not limited to the amount which the pledgee had actually received from the purchaser.

Accounting: Limitation

In *Wheeler* v. *Breslin,* 95 N. Y. Supp. 966, the New York Supreme Court (Special Term, New York County,) decides that after sixteen years from the time a debt was due, an action against the pledgee for an accounting of the disposition of the proceeds of the goods pledged, which had been sold at private sale, and for a judgment for the difference between the sum realized and the amount of the debt, cannot be maintained.

PRACTICE.

Rules of Court

The Superior Court of Pennsylvania decides in *Knowlan* v. *Clopp, Appellant,* 29 Pa. Sup. Ct. 424, that a rule of Court which relieves a plaintiff from producing books of account where a copy of the account is attached to the sworn statement of claim, does not give the plaintiff a right to offer his statement of claim in evidence in addition to a copy of the book account. The offer must be limited to the book account.

PRACTICE (Continued).

In *Cover, Appellant,* v. *Hoffman,* 213 Pa. 213, the Supreme Court of Pennsylvania lays down the proper practice in regard to the reservation of questions of law at trials as follows: The rules for reserving a question of law at a trial are: 1. The question of law reserved must be one of law purely unmixed with any question of fact. 2. It must be one that rules the case so completely that its decision will warrant a binding instruction. 3. The question must be clearly stated, and the facts upon which it arises must be admitted on the record or found by the jury. A reservation that violates any of these rules is incurably bad, and a judgment entered in pursuance of it will be reversed whether an exception has been taken or not. It is accordingly held that a point which asks for binding instructions because on all the evidence the plaintiff is not entitled to a verdict, or because a particular fact has not been established by a preponderance of the testimony, is incurably bad. Compare *Casey* v. *Paving Co.,* 198 Pa. 348.

Reservation of Question of Law

PRESUMPTIONS.

The Supreme Court of Pennsylvania decides in *McCausland's Estate,* 213 Pa. 189, that where a married man disappears and is not heard of for seven years a presumption arises that he is dead, but there is no presumption as to the time during the seven years his death actually occurred; and if his wife marries within the seven years, and there is no proof of the actual date of the death, the presumption is in favor of legitimacy, and in favor of the validity of the second marriage as not having occurred prior to the death of the absent husband. Compare *Oliver's Estate* 184 Pa. 306.

Death: Legitimacy

PRINCIPAL AND AGENT.

In *Hauenstein* v. *Ruh,* 62 Atl. 184, it appeared that the defendant, as a collecting agent, after informing the plaintiff that he was acting as such, received from the plaintiff the amount of a claim against the plaintiff's brother, which was in his hands for collection, and

Liability of Agent

PRINCIPAL AND AGENT (Continued).

at once paid it over to his principal. Under these facts the Supreme Court of New Jersey decides that in the absence of any personal fraud or guaranty of the validity of the claim, the defendant was not answerable to the plaintiff for the amount so received, on proof that the claim was invalid.

PRINCIPAL AND SURETY.

In *Weller* v. *Ralston,* 89 S. W. 698, the Court of Appeals Kentucky decides that an apparent principal in a note may show, as against the obligee, that he is in reality only a surety for his co-obliger, irrespective of the obligee's knowledge that he is only a surety.

Apparent Principals

PUBLIC WORKS.

The Supreme Court of the United States decides in *United States* v. *American Surety Co. of New York,* 26 S. C. R. 168, that labor and materials used in the prosecution of a public work, whether furnished under the contract directly to the contractor or to a sub-contractor, must be deemed within the obligation of a surety company under a bond executed pursuant to the Act of Congress of August 13, 1894, conditioned for the prompt payment of the contractor to " all persons supplying it labor or materials in the prosecution of the work provided for in said contract," in view of the manifest purpose of that statute to protect those whose labor or material has contributed to the prosecution of the work. See in connection herewith the case *United States Fidelity and Guaranty Co.* v. *Golden Press & Fire Brick Co.,* 191 U. S. 416, construing the same statute.

Contractor's Bond

RAILROADS.

The Superior Court of Pennsylvania decides in *Pickup* v. *Phila. & Ry. Co., Appellant,* 29 Pa. Sup. Ct. 631, that a railroad company cannot be enjoined by a property-owner from constructing a watch-box partly upon the owner's sidewalk, where it appeared that the

Use of Streets

RAILROADS (Continued).

company has the consent of the city for such construction, that the watch-box is to be used in connection with a safety-gate and is of proper construction, and that the erection of the box wholly within the street would interfere with the use of the driveway, and as constructed on the sidewalk would leave ample room for the passage of pedestrians. Compare in this connection *Wilson* v. *Phila. & Reading R. R. Co.*, 5 W. N. C. 185.

SALES.

The Supreme Court of New Jersey decides in *Conn* v. *Reed, Dawson & Co.*, 62 Atl. 271, that as between consignee and consignor the loss of goods by a common carrier falls upon the consignor when the carrier was selected by him in the performance of his agreement to make a delivery to the consignee.

Failure to Deliver

The Supreme Court of Mississippi decides in *German-American Provision Co.* v. *Jones Bros. & Co.*, 39 Southern 521, that a seller of lard, on a dispute with the buyer as to its quality, had no right to require the return of the lard without returning the part of the price paid therefor.

Rescission by Seller

STATUTE OF LIMITATIONS.

It is decided by the Superior Court of Pennsylvania in *O'Neill's Estate*, 21 Pa. Sup. Ct. 415, that where an original writ of summons is issued but not served, and an alias writ is not issued until more than seven years after the issuance of the original writ, the claim is barred by the statute of limitations. In such a case the plaintiff would be barred by the laches, even if in strictness the statute of limitations was not a bar. Compare herewith the case of *Schlosser* v. *Lescher*, 1 Dallas, 411.

Summons: Alias Writ

TAXATION.

It is held by the Supreme Court of Louisiana in *Monongahela River Consol. Coal & Coke Co.* v. *Board of Assessors,* 39 Southern 601, that where the business of a non-resident corporation was located within the state and conducted through a local agent, claims of the corporation, such as bills and notes and other paper taken in the course of business, and used in such state and collected there, having definite tangible form, were taxable by the state. Compare *The Board* of *Assessors Case,* 191 U. S. 401.

Property Subject

TIME.

An important decision of the Supreme Court of Pennsylvania, construing the statute of that State which makes void a charitable bequest contained in a will executed within one calendar month from the date of death, appears in *Gregg's Estate,* 213 Pa. 260. In that case it appeared that a will containing a charitable bequest was executed on October 8, 1899, between the hours of 3 and 5 o'clock P. M. Testatrix died on November 8, 1899, between the hours of 7 and 8 o'clock P.M. Under these facts the Court decides that the will was executed within one calendar month from the death, and that the charitable bequest failed. One clear month it is said must intervene between the execution of the will and the death of the testator, and it is not permissible to piece out the time by adding together fractions of days. With this decision compare *Parker's Estate,* 14 W. N. C. 566.

Calendar Month

VENDOR AND PURCHASER.

The New York Supreme Court (Special Term, Orange County,) decides in *Weiss* v. *Schweitzer,* 95 N. Y. Supp. 923, that where a vendor contracted to convey a corner lot, containing a frontage of about forty-two feet on one street, and was unable for want of title to convey more than about thirty-four feet, covered by a building, thus leaving an open strip of about eight feet between the line of the building and the other street which he could not convey, the vendee was entitled to recover the amount paid by him upon the execution of the contract, and to establish and enforce a vendee's lien therefor.

Failure of Vendor's Title